* **HIGH COURT OF DELHI : NEW DELHI**

Date of decision: 20th August, 2007

\+ **W.P. (C) No. 5877/2007**

% Ram Lal Adlakha. .....Petitioner
Through: Mr. Puneet Taneja, Advocate

versus

Government of NCT of Delhi & Ors ..... Respondents
Through: Mr. Salil Ahmed, Advocate

CORAM:

HON'BLE MR.JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J

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1. The petitioner was appointed as a Teacher in the year 1964. During the period of emergency, break in service was given to the petitioner and many other similarly situated persons. However, thereafter he was re-employed vide letter dated 12.11.1976 but in a lower scale. Some similarly situated employees had approached the Central Administrative Tribunal

(hereinafter referred to as the 'Tribunal') and orders were passed by the Tribunal condoning break in service and directing grant of full pay etc. These orders were passed on 31.5.1988. Subsequently, the respondents passed the order condoning the break in service in the petitioner's case as well. After the passing of these orders, the scale of pay, which the petitioner was earlier enjoying, was restored and his pay was re-fixed on 28.9.1994. The petitioner continued to enjoy this pay scale, and correspondingly higher pay scales for the rest of his career on revision of pay scales from time to time. He retired on 31.7.2003 and as on that date his basic pay was Rs.10,900/-. However, much after his retirement, the respondents refixed his pay by lowering it down on the ground that in the year 1994 it was wrongly fixed. On the basis of this re-fixation, the pension of the petitioner has been reduced and the excess payment made to the petitioner has also been deducted from the gratuity paid to him.

2. This action of the respondents was challenged by the petitioner by filing OA before the Tribunal. One of the contentions raised before the Tribunal was that before revising the pay and reducing the same, no show cause notice was served upon the petitioner. The learned Tribunal has, however,

dismissed the petition of the petitioner on the ground that service of show cause notice would not have served any purpose as no other conclusion was possible and no prejudice has been caused to the petitioner. For this, the Tribunal referred to the judgment of the Supreme Court in *Aligarh Muslim University and Others v. Mansoor Ali Khan*, 2007 (7) SCC 529.

3. We are of the opinion that the Tribunal is not right, in the facts of this case, in holding that the purported mistake could be rectified without issuance of show cause notice and without giving an opportunity to the petitioner of being heard.

4. A perusal of the basic facts noted above would indicate that the petitioner had enjoyed the revised pay scale and drawn salary accordingly from 1994 till the date of his retirement in July 2003. The pay is now revised downward and the respondent even have made deductions from the gratuity payable to the petitioner. How, in these circumstances, it can be said that no prejudice is caused to the petitioner, more so when it will have impact on his pension as well, is difficult to understand or accept.

5. Learned counsel for the respondent has referred to Office Order No. 237 dated 12.11.1976 vide which the

petitioner was re-employed and on that basis, he submits that since the petitioner was earlier rendered surplus and it was a case of re-employment, in this letter it was categorically mentioned that his pay would be fixed at the minimum of time scale and in view of this Office Order, the action of the respondent was correct in re-fixing the pay inasmuch as pay in the year 1994 was revised wrongly and by ignoring the aforesaid stipulation contained in Office Order dated 12.11.1976.

6. Learned counsel for the petitioner, on the other hand, has submitted that after this Office Order, on the basis of which the petitioner was taken back in the employment, a conscious decision was taken by the respondent to condone the break in service, the effect whereof was that the petitioner was treated as in continuous employment. He further states that many employees had approached the Tribunal and the Tribunal had given the judgment and it is on the basis of this judgment that order dated 28.9.1994 was passed re-fixing the pay by giving benefit of the said judgment to the petitioner as well, who was similarly situated.

7. In view of the above, the contention of the respondent that the conclusion about the re-fixation of lower

pay, reduction of pension and recovery from the retiral dues of the petitioner is obvious on the basis of Office Order dated 12.11.1976, does not appear to be correct. It is clear that the petitioner had much to say against the action of the respondent. Therefore, in a case like this, we are of the view that action could not have been taken without serving show cause notice to the petitioner and giving him opportunity of being heard.

8. We have also been shown the order dated 30th April 1992 in O.A. No. 1870/89 "***Shri H.K.Anand v. Delhi Administration & Anr.***" and other connected OA's passed by the Tribunal. The Tribunal in this order has reproduced the operative part of the orders passed in the various transfer applications bearing Nos. T-71/86, T-541/86, T-533/86, etc., which reads as follows:

> "9. In the facts and circumstances, we decree the suits declaring the order of termination of the plaintiffs' service in 1976 as illegal and directing that the break in service between August 1976 and 1978 should be condoned with all consequential benefits of seniority, pension, back wages, etc., in full. There will be no order as to costs."

9. Learned counsel for the Petitioner argued that, in fact, the order dated 28th September 1994 was issued by adopting the anology of the decision of the Tribunal in the

aforesaid transfer petitions, and with the approval of the Director, Training and Technical Education, the break in service in respect of the Petitioner was condoned from 19.8.1976 to 12.11.1976. The principal of Government Boys Senior Secondary School, Railway Colony, Tughlakabad, New Delhi, passed an order in pursuance of the order of the Deputy Director, Technical Education and with the approval of the Director, Technical Education, whereby the Petitioner's pay was fixed in the pay scale of Rs.550 - 900.

10. The submission of the Respondent that the Principal of the Government Boys Senior Secondary School, Railway Colony, Tughlakabad, New Delhi wrongly fixed the pay of the Petitioner at Rs.750/- in the scale of Rs.550-900 and that the same should have been fixed in the pay scale of Rs.440-750/-, even if assumed to be correct, in our view would not provide any justification for effecting recovery, on the basis of their own pay fixation, which was undertaken about 11 years ago from the date the recovery was sought to be effected. It is not the Respondent's case that the Petitioner had any role to play in the fixation of his pay in the fixation of his pay in a higher pay scale. It is well settled that in such circumstances, no recovery could be effected from the employee (see ***Shyam***

Babu Verma v. UOI, (1994) 2 SCC 521 and ***Col. B.J. Akkara (Retd) v. Government of India,*** (2006) 11 SCC 709, ***K.S.R.T.C. v. K.O. Verghese & Others*** (2003) 12 SCC 293).

11. The Petitioner had retired on 31.7.2003 and only on 7th October 2005, the Respondent sought to re-fixed the pay of the Petitioner from the year 1976 onwards and on that basis effected recovery from the retiral dues and also to reduce the pension of the Petitioner. This, in our view, would be highly inequitable and unfair to the petitioner.

12. Apart from the aforesaid consideration, we also find force in the Petitioner's submission that the Respondent was wrong in its contention that the Petitioner was not entitled to draw salary of Rs.550-900. He has drawn our attention to an office order dated 28.9.1976, which shows that as per the increments to which the Petitioner was shown to be entitled as on 1st September 1975 his revised pay was fixed at Rs.725/- which is in the revise pay scale and not in the pre-existing scale. This shows that the Petitioner was in the revised scale of Rs.550-900 prior to the termination of his service on 18.8.1976.

13. For the reasons aforesaid, we set aside the impugned order passed by the Tribunal on O.A. No. 804/2006

dated 8th January 2007 and allow the Petitioner's aforesaid original application and quash Respondent's action in revising the pay of the Petitioner, reducing his pension and withholding the amount of Rs.1,68,704/- on account of excess pay and allowance paid to him. We further direct the Respondents to make payment to the Petitioner all the amounts withheld, as well as to pay the Petitioner, his full pension as per the salary last drawn by him and to make the payment of the arrears of the difference in the pension within four weeks from today.

The petition is allowed in the aforesaid terms, with, cost.

A.K. SIKRI, J.

VIPIN SANGHI, J.

August 20, 2007
hp/P.K. BABBAR